



Legislative Bulletin.....March 9, 2007

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H.R. 720 — Water Quality Financing Act of 2007

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 2

Total Cost of Discretionary Authorizations: \$16 billion over five years

Effect on Revenue: increased by \$416 million over five years

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 1

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 720 — Water Quality Financing Act of 2007 (*Oberstar, D-MN*)

Order of Business: The bill is scheduled for consideration on Friday, March 9, 2007, likely subject to a modified open rule requiring pre-filing of all amendments in the *Congressional Record* by noon on Wednesday, March 7, 2007.

Summary by Title:

Title I: Technical and Management Assistance

- **Authorizes \$375 million over five years (FY 2008- FY 2012) for the creation of a new federal grant program** at the Environmental Protection Agency (EPA)

to provide technical assistance to rural and small municipalities to develop wastewater infrastructure.

- Directs the EPA to establish procedures to promote competition and openness in the award of grants to nonprofit, private agencies, institutions, and organizations.
- **Reauthorizes at \$1.5 billion over five years (FY 2008-FY 2012), the state grant pollution control programs.**
- **Reauthorizes through 2012, at \$20 million annually, an expired “pilot” program** that provides technical assistance grants for treatment water works projects.

Title II: Construction of Treatment Works

- Provides that certain sewage collection systems are eligible for existing federal funding provided to address “an adverse environmental condition existing on the date of enactment.”
- Expands the definition of “treatment works” to include land acquisition.

Currently the definition is as follows:

“any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.”

Title III: State Water Pollution Control Revolving Funds

- **Authorizes \$14 billion over five years for the Clean Water State Revolving Fund (SRF)**, which is a program that provides grants to states in order to pay for the construction of clean water projects. Originally established in 1961 as a grant program, Congress amended the program in 1987, to require states to contribute to their state’s revolving fund, at least 20 percent of the amount of the capitalization grant they receive from the federal appropriation. The intent was for each state, by 1995, to maintain a self-sustaining revolving fund through which local water projects would be funded. At that point, the federal government would be able to withdraw its initial start-up funding for this program, and the states would be self-sufficient. Although these revolving funds are fully operational in the states, and the fund has been unauthorized since 1995, Congress has continued to annually provide approximately \$1 billion for this program through the appropriations process.
- **Applies the Davis-Bacon prevailing wage requirement to construction projects funded through this revolving fund.** Specifically, Davis- Bacon requires that each federal government contract worth over \$2,000 for the

construction, alteration, or repair of public buildings or public works (including airports and public housing) set the minimum wages to be paid to laborers and mechanics employed under the contract at no less than the *locally prevailing wages* paid on projects of a similar character (as determined by the Secretary of Labor).

In 1987, Congress continued to require that the Davis- Bacon prevailing wage requirement apply to water projects constructed before FY 1995. As noted above, it was assumed that Congress would stop funding this program in 1995, and that no additional reauthorizations would be necessary. Thus, although Congress continued to fund the program, the authorization expired, as did the various authorized requirements, such as the Davis-Bacon provision. As such, the Davis-Bacon requirement has not applied to construction projects funded through the revolving funds. However, this bill would reinstitute this requirement. To read an RSC backgrounder on Davis-Bacon, please click [here](#).

- Makes several changes to the state revolving fund program, including a requirement that states use at least 15 percent of the amount of their grant to provide assistance to municipalities of fewer than 10,000 individuals that meet certain affordability criteria.
- Reauthorizes the Water Pollution Revolving Loan Fund that was authorized in FY 1989, which provides funding through a revolving fund—similar to the Clean Water Fund—for wastewater treatment construction. The Fund’s authorization expired in 1994, however Congress has continued to appropriate funds to the program. H.R. 720 makes several changes to this revolving fund program, including the following:
 - Allows up to 30 years (up from 20) for grantees to repay their loans to the revolving fund.
 - Allows states to use up to \$400,000 (or 1/5 percent of the grant) for administrative expenses.
 - Requires states to use up to two percent of their grant to provide owners and operators of treatment works, that serve a population of 10,000 or fewer, with technical and planning assistance and assistance in financial management, user fee analysis, budgeting, capital improvement planning, and other activities.
 - Allows states to provide additional subsidization to municipalities, including loan forgiveness of principal and negative interest rates in certain, defined circumstances. Requires states to use 25 percent of federal funds provided above \$1 billion for this additional subsidy.
- Adjusts the current formula for allocating funds from the SRF. Under current law, a statutory formula determines the amount of the SRF grant given to each state. H.R. 720 would provide that the first \$1.35 billion appropriated through this program would continue to be distributed to states based on this formula.

However, the bill requires that any appropriation beyond the \$1.35 billion, be distributed based upon a new formula based on certain requirements.

Title IV: General Provisions

- Provides that of all funding authorized for SRF, not less than 0.5 percent and not more than 1.5 percent, is to be used for grants given to projects serving Indian tribes, former Indian reservations in Oklahoma (as defined by the Secretary of the Interior, and native villages, as defined in the Alaska Native Claims Settlement Act. Current law sets aside 0.5 percent for these groups.

Title V: Studies

- Directs the Comptroller General to “study of the funding mechanisms and funding sources available to establish a Clean Water Trust Fund.” The study is to include “an analysis of potential revenue sources that can be efficiently collected, are broad based, are related to water quality, and that support the annual funding levels authorized by this bill.” The study is to be submitted to Congress no later than January 1, 2008.
- Directs the Comptroller General to “study of “funding mechanisms and funding sources potentially available for wastewater infrastructure and other water pollution control activities under the Federal Water Pollution Control Act.” The study is to include an “analysis of funding and investment mechanisms and revenue sources from other potential supplemental or alternative public or private sources that could be used to fund wastewater infrastructure and other water pollution control activities under the Federal Water Pollution Control Act.” The study is to be submitted to Congress no later than January 1, 2008.

Title VI: Tonnage Fees

- Increases net tonnage fees (net tonnage refers to a measurement of the vessel’s weight) on vessels entering the United States from any foreign port. Specifically, the bill increases for FY 2006 and FY 2007, tonnage fees (duties) from 2 cents to 4.5 cents (with a 22.5 cents per ton per year limit, up from 10 cents) on vessels entering the United States from most foreign ports in the Western Hemisphere (see additional information for specific list). The bill would then increase the fee from the 4.5 cents to 9 cents per ton for FY 2008 through FY 2017. In addition, the legislation increases fees for FY 2006 and FY 2007, from 6 cents to 13.5 cents (with a 67.5 cents per ton per year limit up from 30 cents), on vessels arriving in the U.S. from foreign ports in the Eastern Hemisphere. The bill would then increase the fee from 13.5 cents to 27 cents for FY 2008 through FY 2017.

Similar provisions increasing vessel tonnage fees were included in the Deficit Reduction Act of 2005. This provision is designed to increase money coming into the Treasury, in order to offset other provisions in the bill that reduce federal revenues. Vessel tonnage fees were originally established in Payne-Aldrich Tariff Act of August 5, 1909, a law which modified the amount of duty collected from imported merchandise. At that time, fees placed upon vessels entering the U.S. from the following list of countries, all located in the Western Hemisphere, were

less than those placed upon vessels arriving from all of the other regions/countries, most of which are located in the Eastern Hemisphere:

- North America
- Central America
- West India Islands
- Bahama Islands
- Bermuda Islands
- States along the cost of South America bordering the Caribbean Sea or Newfoundland

According to U.S. Customs, the lower fee was designed to encourage trade and activity with those countries closest to the U.S. Since that time, this fee structure has continued to be enforced.

Possible Conservative Concerns: Some conservatives may be concerned that this bill authorizes \$16 billion for the creation of two new programs and other existing programs, and significantly expand the State Revolving Fund. In addition, some conservatives may also be concerned that this bill would apply the Davis-Bacon prevailing wage requirement to construction contracts funded through the SRF.

Committee Action: H.R. 720 was introduced on January 30, 2007, and referred to the House Committee on Transportation and Infrastructure, which held a mark-up, and reported the bill on February 7, 2007, by a vote of 55-13. The Committee reported out an amended version by voice vote on March 5, 2007.

Cost to Taxpayers: According to CBO, H.R. 720 would authorize discretionary spending of \$2.4 billion in FY 2008, and \$16 billion over five years.

In addition, the Joint Committee on Taxation estimates that enacting H.R. 720 would reduce revenues coming into the SRF by minimal amounts in FY 2008, but by \$49 million over five years. In order to avoid a PAYGO point of order, the bill increases vessel tonnage fees. CBO estimates that these increased fees would increase offsetting receipts (money coming into the Treasury) by \$256 million over five years. In total, enacting H.R. 720 would increase revenue coming into the Treasury in total by \$80 million in FY 2008, and by \$416 million over five years. However, as noted above, the bill authorizes \$16 billion in *discretionary* spending over five years (authorizations are not subject to PAYGO requirements even though they represent intent to spend later in the appropriations process

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates 2 new programs, and increases an existing program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. According to CBO, by increasing vessel tonnage fees, enacting H.R. 720 would “impose a private-sector mandate on operators of vessels entering the United States from any foreign port or place.”

Does the Bill Comply With the House Earmark Rule?: According to Committee Report 110-30, H.R. 720 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: The Transportation and Infrastructure Committee, in Committee Report 110-30 cites constitutional authority in Article I, Section 8, but fails to cite a specific clause.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution” (*emphasis added*).

Statement of Administrative Policy: Although an official SAP has not been released from the White House, at press time the Administration is expected to issue a veto threat against H.R. 720 because of the increased spending the Davis-Bacon provisions.

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